

# COURT OF CRIMINAL APPEALS

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**PD-0805-16**

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FILED  
COURT OF CRIMINAL APPEALS  
1/26/2017  
ABEL ACOSTA, CLERK

***David Wayne Cahill, Appellant***

***v.***

***State of Texas, Appellee***

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**On Appeal from the  
380th Judicial District Court  
Collin County, Texas  
Cause Number 380-81088-2012**

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## **Motion to Extend Time to File Appellant's Brief**

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**Attorney for Appellant**

**To the Honorable Justices of the Court of Appeals:**

Appellant David Wayne Cahill moves for an extension of time of **30 days** to file the Appellant's Brief [*See* Tex. Rule App. Proc. 10.5(b) and 38.6(c)]:

1. This case is on appeal from the 380th District Court of Collin County, Texas.

2. The case below is styled the *State of Texas v. David Wayne Cahill*, and is numbered 380-81088-2012.

3. Appellee's brief on this Court's grant of discretionary review was filed on December 28, 2016, by extension upon State's motion.

4. Under T.R.A.P. 70.2, Appellant's brief is due January 27, 2017.

5. Appellant requests an extension of time of **30 days** to file the Appellant's Brief from the due date, *i.e.* until **February 26, 2017**.

6. No previous extensions to file the Appellant's Brief have been requested.

7. Appellant relies on the following facts as good cause for the requested extension: Attorney for Appellant is working on a brief on a Federal Writ of Habeas Corpus under 28 U.S.C. §2254 in *Ex Parte John Hummel*, 4:16-cv-00133-O. This is a complex death penalty case. Additionally, under 28 USC §2244(d), the hard deadline on this case of February 9, 2017 **cannot** be extended, and a continuance cannot be had.

8. Additionally, Attorney for Appellant is currently working on records and briefs in a number of other direct appeals, virtually all of which happened have records filed in December 2016, leading to briefing due dates in January and early February of 2017. These include: *Caldwell v. State*, 05-16-00832-CR (filed January 12, 2017); *Franklin v. State*, 05-16-00546-CR (due February 2, 2017); *Lopez v. State*, 05-16-01024-CR (due February 2, 2017); *Ayala v. State*, 05-16-01136-CR (due February 3, 2017); *Davis v. State*, 05-16-01341-CR (due February 3, 2017); *Davis v. State*, 05-16-01342-CR (due February 3, 2017); *Davis v. State*, 05-16-01343-CR (due February 3, 2017); *Hernandez-Palomares v. State*, 08-15-00312-CR (due February 4, 2017); *Nelms v. State*, 05-16-00976-CR (due February 7, 2017); *Martinez-Ovalle v. State*, 05-16-01275-CR (due February 10, 2017); and *Santillana v. State*, 05-16-01046-CR (due February 19, 2017).

9. Further, Attorney for Appellant is working on records in *Callens v. State*, 05-16-01180-CR and 05-16-01181-CR (anticipated due date is March, 2017—however, this is a complex double murder case with juvenile certification issues).

10. Finally, Attorney for Appellant was involved in a major accident earlier this month in which her vehicle was totaled, and she has had to spend several days dealing with that. The following day her son's finger was partially amputated while dining at a local restaurant, requiring Attorney's attention at

numerous medical appointments.

11. All of this is in addition to Attorney for Appellant's regular trial and hearing docket.

12. Attorney for Appellant has a responsibility to Appellant to provide Appellant with the effective assistance of appellate counsel, *see Evitts v. Lucey*, 469 U.S. 387, 392 (1985), and Attorney for Appellant believes that an extension of at least **30 days** is necessary to provide such effective appellate counsel.

13. Attorney for Appellant thus requests a 30-day extension until **February 26, 2017**, so that she may properly prepare the Appellant's Brief in accordance with Attorney for Appellant's standards and provide Appellant the effective assistance of appellate counsel.

14. This Motion is not filed for purposes of delay, but so that justice may be served.

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**Prayer**

Appellant prays that this Motion for Extension of Time to File  
Appellant's Brief be granted.

Respectfully submitted,

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**Certificate of Service**

This certifies that, on the date of the filing of this document, a true and correct copy was served on the office of the State Prosecuting Attorney by eservice to [john.messinger@spa.texas.gov](mailto:john.messinger@spa.texas.gov), and to the appellate division of the District Attorney, Collin County generally at [daappeals@collincountytx.gov](mailto:daappeals@collincountytx.gov).



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by Kristin R. Brown